

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

-----X
IN THE MATTER OF THE)
CARROLL & DUBIES SUPERFUND SITE)
)
City of Port Jervis,) U.S. EPA INDEX NO.
) II-CERCLA-97-0209
Respondent.)
)
Proceeding Under Section 106(a) of the)
Comprehensive Environmental Response,)
Compensation, and Liability Act of 1980,)
as amended (42 U.S.C. § 9606(a)).)
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ADMINISTRATIVE ORDER
FOR REMEDIAL DESIGN AND REMEDIAL ACTION

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TABLE OF CONTENTS

I. INTRODUCTION AND JURISDICTION	1
II. FINDINGS OF FACT	1
III. CONCLUSIONS OF LAW	5
IV. NOTICE TO THE STATE	5
V. DETERMINATION	5
VI. ORDER	6
VII. DEFINITIONS	6
VIII. NOTICE OF INTENT TO COMPLY	9
IX. PARTIES BOUND	9
X. WORK TO BE PERFORMED	11
XI. FAILURE TO ATTAIN PERFORMANCE STANDARDS	29
XII. EPA PERIODIC REVIEW	30
XIII. ADDITIONAL RESPONSE ACTIONS	30
XIV. ENDANGERMENT AND EMERGENCY RESPONSE	31
XV. EPA REVIEW OF SUBMISSIONS	31
XVI. REPORTING REQUIREMENTS	33
XVII. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS	34
XVIII. COMPLIANCE WITH APPLICABLE LAWS	35
XIX. REMEDIAL PROJECT MANAGER, NOTIFICATION	37
XX. COMMUNITY RELATIONS	39
XXI. SITE ACCESS, INSTITUTIONAL CONTROLS	

AND DATA/DOCUMENT AVAILABILITY	39
XXII. RECORD PRESERVATION	47
XXIII. DELAY IN PERFORMANCE	47
XXIV. ASSURANCE OF ABILITY TO COMPLETE WORK	48
XXV. UNITED STATES NOT LIABLE	49
XXVI. ENFORCEMENT AND RESERVATIONS	49
XXVII. EFFECTIVE DATE AND COMPUTATION OF TIME	51
XXVIII. OPPORTUNITY TO CONFER	51
XXIX. TERMINATION AND SATISFACTION	51

ADMINISTRATIVE ORDER
FOR REMEDIAL DESIGN AND REMEDIAL ACTION

I. INTRODUCTION AND JURISDICTION

1. This Order directs the City of Port Jervis (hereinafter referred to as "Respondent") to perform the remedial design for the remedy described in the United States Environmental Protection Agency's ("EPA's") March 31, 1995 and September 30, 1996 Records of Decision ("OU1 ROD and OU2 ROD") for the Carroll & Dubies Superfund Site (the "Site") in the Town of Deerpark, Orange County, New York, and to implement the design by performing the remedial action. This Order is issued to Respondent by EPA under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926, January 29, 1987), and was further delegated to EPA Regional Administrators on September 13, 1987 by EPA Delegation No. 14-14-B.

II. FINDINGS OF FACT

2. The Site is located in an industrial area at the north end of Canal Street in the Town of Deerpark, Orange County, New York, just north of the City of Port Jervis. It is adjacent to the western wall of the Neversink River Valley. Immediately south of the Site is the City of Port Jervis Landfill. The location of the Site is shown in Figure 1, attached hereto.

3. The Site was operated by Carroll & Dubies Sewage Disposal, Inc. ("C&D") as a waste disposal facility from approximately 1970 through 1979, during which time the Site was used for the disposal of septic and municipal sewage sludge and industrial wastes. During C&D's operation of the Site, wastes containing hazardous substances were disposed of into unlined lagoons at the Site.

4. In January 1981, an inspection of the Site by EPA and its contractor detected the presence of hazardous substances,

including chromium and lead, in samples taken from a lagoon at the Site. Subsequent investigations of the Site by the New York State Department of Environmental Conservation ("NYSDEC") revealed the presence of various organic and inorganic constituents in the sludge in four lagoons at the Site, as well as several volatile organic compounds ("VOCs"), chromium and lead in the groundwater downgradient of those lagoons.

5. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on February 21, 1990, 55 Fed. Reg. 6154.

6. Pursuant to a February 8, 1990 Administrative Order on Consent issued by EPA, Kolmar Laboratories, Inc. ("Kolmar") and Wickhen Products, Inc. ("Wickhen") commenced a Remedial Investigation and Feasibility Study ("RI/FS") at the Site in accordance with the National Contingency Plan ("NCP"), 40 CFR Part 300.

7. After Kolmar and Wickhen commenced the RI (hereinafter, the "preliminary RI"), EPA discovered, through the use of aerial photographs, the existence of four lagoons at the Site west and southwest of the four previously identified lagoons.

8. In October 1992, Kolmar and Wickhen agreed to perform a supplemental RI with respect to the four newly discovered lagoons at the Site. The preliminary RI and supplemental RI were completed in October 1992 and December 1993, respectively. Kolmar and Wickhen completed the FS in July 1994.

9. The preliminary RI identified the presence of a number of VOCs, including benzene, chlorobenzene, tetrachloroethene and toluene, in the sludge in lagoons 1 through 4 and in the soil immediately beneath those lagoons. The supplemental RI identified the presence of nine VOCs as well as many semi-volatile organic compounds ("SVOCs") and priority pollutant inorganics in lagoon 6; very high concentrations of benzene, tetrachloroethene, toluene and trichloroethene, numerous SVOCs, and priority pollutant inorganics in lagoon 7; and numerous VOCs, SVOCs and several priority pollutant inorganics in lagoon 8.

10. The Site is being addressed in two operable units. The first operable unit addresses source area contamination at the Site, and the second operable unit addresses groundwater contamination at the Site. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for the first operable unit remedial action on August 15, 1994, and for the second operable unit remedial action on August 28, 1996.

11. EPA issued a first operable unit Record of Decision (the "OU1 ROD") for the Site on March 31, 1995, in which the Agency selected the remedial action to be implemented for the first operable unit at the Site. The remedial action selected in the OU1 ROD calls for, among other things, excavation of contaminated lagoon materials and soils, treatment of excavated soil/sludges which contain organic constituents above the treatment levels specified in the OU1 ROD via on-Site, ex-situ vapor extraction, additional treatment of semi-volatile contaminants in lagoon 7 soils/sludges via ex-situ bioslurry treatment, and stabilization/solidification of soils and sludges which fail the Resource Conservation and Recovery Act's ("RCRA's") Toxicity Characteristic Leaching Procedure for inorganic constituents. Treated and untreated soils and sludges will be placed into a lined and capped cell. The OU1 ROD also calls for a contingency remedy to be implemented in the event that treatability studies indicate that the selected remedy would not be effective for lagoon 7 materials. The contingency remedy includes excavation, off-Site treatment (as necessary) and off-Site disposal of lagoon 7 materials.

12. EPA's OU1 ROD is supported by an administrative record that contains the documents and information upon which EPA based the selection of the response action.

13. EPA issued a second operable unit Record of Decision (the "OU2 ROD") for the Site on September 30, 1996, in which the Agency selected the remedial action to be implemented for the second operable unit at the Site. The remedial action selected in the OU2 ROD calls for, among other things, natural attenuation of organic contaminants in the groundwater to below federal drinking water and State groundwater standards through naturally occurring removal processes, implementation of institutional controls for the purpose of restricting installation and use of

groundwater wells at the Site, monitoring of the groundwater to evaluate improvement in groundwater quality and ensure the effectiveness of the remedy, and sampling in Gold Creek to ensure that site-related contaminants do not impact the Creek.

14. EPA's OU2 ROD is supported by an administrative record that contains the documents and information upon which EPA based the selection of the response action.

15. EPA investigations, including information request letters issued pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and the responses thereto, have identified Kolmar, Wickhen and Reynolds Metals Company as generators of hazardous substances-containing waste that was disposed of at the Site.

16. Information obtained by EPA indicates that the City of Port Jervis owned property at the Site upon which lagoon nos. 1, 3-8 and part of 2 are located during the period of disposal of hazardous substances at the Site (approximately 1970-1979), and continues to own such property.

17. On May 19, 1995, EPA issued "special notice" letters pursuant to Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), to Respondent and to Reynolds Metals Company, C&D, Kolmar and Wickhen, inviting them to agree to undertake the OU1 Remedial Design/Remedial Action at the Site and to reimburse EPA for its Site-related past costs. Kolmar and Wickhen submitted an offer in response to that notice letter. Subsequent consent decree negotiations between EPA and Kolmar and Wickhen, however, were unsuccessful.

18. On September 29, 1995, EPA issued a Unilateral Administrative Order, Index No. II-CERCLA-95-0221 (the "OU1 UAO") to C&D, Kolmar and Wickhen. The OU1 UAO requires those parties to implement the remedy selected by the OU1 ROD. On the same day that the instant Order is being issued, EPA is issuing an amendment to the OU1 UAO to include performance of the remedy selected by the OU2 ROD. That amendment to the OU1 UAO is hereinafter referred to as the "Amendment".

19. Actual or threatened releases of hazardous substances at and from the Site, if not addressed by implementing the response actions selected in the OU1 ROD and OU2 ROD, may present an

imminent and substantial endangerment to the public health, welfare or the environment.

III. CONCLUSIONS OF LAW

20. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

22. Respondent is a liable party as defined in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

23. The substances listed in Paragraphs 4 and 9 are found at the Site and are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). These hazardous substances have been released at and from the Site into the environment.

24. The disposal of hazardous substances at the Site constitutes a "release" within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

25. The actions required by this Order are necessary to protect the public health, welfare, and the environment.

IV. NOTICE TO THE STATE

26. Notice of this Order has been given to NYSDEC in accordance with Section 106 of CERCLA, 42 U.S.C. § 9606.

V. DETERMINATION

27. Based on the FINDINGS OF FACT and CONCLUSIONS OF LAW set forth above and the entirety of the administrative record, the Regional Administrator has determined that the release or threatened release of hazardous substances at the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

VI. ORDER

28. Based on the foregoing, Respondent is hereby ordered to comply with the following provisions, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order.

VII. DEFINITIONS

29. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Order, or in attachments to or documents incorporated by reference into this Order, the following definitions shall apply:

- a. "Amendment" means the Amendment to EPA's Operable Unit One Unilateral Administrative Order, Index No. II-CERCLA-95-0221, to Kolmar, Wickhen, and C&D, which Amendment is being issued on the same day as the instant Order.
- b. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9601 et seq.
- c. "Day" means a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business on the next working day.
- d. "EPA" means the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- e. "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

- f. "Institutional Controls" shall mean land and/or water use restrictions which may include, but need not be limited to, restrictions in the form of contractual agreements, deed restrictions, state or local laws, regulations, ordinances or other governmental action.
- g. "National Contingency Plan" or "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under Section 105 of CERCLA, 42 U.S.C. § 9605, published at 55 Fed. Reg. 8666 (1990), and codified at 40 C.F.R. Part 300, including any amendments thereto.
- h. "NYSDEC" means the New York State Department of Environmental Conservation.
- i. "Operation and Maintenance" or "O&M" means those activities required under this Order for the purpose of maintaining the effectiveness of the measures taken in the Remedial Action (as defined below) following the implementation of those measures.
- j. "OU1 ROD" means the Record of Decision document issued by EPA on March 31, 1995 (and all attachments thereto) in which the remedy for the first operable unit at the Site was selected by the Regional Administrator of EPA, Region II. The OU1 ROD is attached to this Order as Appendix 1, and is incorporated herein by reference.
- k. "OU2 ROD" means the Record of Decision document issued by EPA on September 30, 1996 (and all attachments thereto) in which the remedy for the second operable unit at the Site was selected by the Regional Administrator of EPA, Region II. The OU2 ROD is attached to this Order as Appendix 2, and is incorporated herein by reference.
- l. "Party" or "Parties" means the United States of America and/or Respondent.
- m. "Performance Standards" means those cleanup standards, standards of control, and other substantive requirements, criteria or limitations set forth in or

referenced in the OU1 ROD and OU2 ROD or which are otherwise approved by EPA in writing during the course of the Work. Requirements promulgated or modified after the issuance of the OU1 ROD or OU2 ROD may become Performance Standards pursuant to Section 300.430(f)(1)(ii)(B) of the NCP.

- n. "Performing Parties" means Kolmar Laboratories, Inc. and Wickhen Products, Inc.
- o. "Remedial Action" or "RA" means the remedy authorized by the OU1 ROD and OU2 ROD, as further delineated in this Order, and in the various EPA-approved plans referred to below.
- p. "Remedial Design" or "RD" means those activities to be undertaken by Respondent to develop the final "Remedial Design Report" or "RD Report", including, but not limited to, the final plans and specifications and other components and requirements for the Remedial Action pursuant to the EPA-approved plans referred to below.
- q. "Respondent" shall mean the City of Port Jervis.
- r. "Site" means the Carroll & Dubies Superfund Site, located at the north end of Canal Street in the Town of Deerpark, Orange County, New York and depicted generally on the map attached as Figure 1. The Site includes the parcels where Carroll & Dubies Sewage Disposal, Inc. has conducted operations (including but not limited to waste disposal activities) and all areas to which hazardous substances that have been released at or from those parcels have migrated.
- s. "State" means the State of New York.
- t. "Waste Material" means (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C.

§ 6903(27); and (4) any mixture containing any of the constituents noted in (1), (2) or (3), above.

- u. "Work" means all work and other activities required by and pursuant to this Order, including, but not limited to, implementation and Operation and Maintenance of the Remedial Action, and the preparation of the schedules, plans and reports required hereunder to be submitted in connection therewith.

VIII. NOTICE OF INTENT TO COMPLY

30. Respondent shall provide, not later than five (5) days after the effective date of this Order, written notice to the EPA addressees listed in Paragraph 71 below stating whether it will comply with the terms of this Order. If Respondent does not unequivocally commit to perform the Work as provided by this Order, it shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Respondent's written notice shall describe, using facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondent under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be an acceptance of Respondent's assertions.

IX. PARTIES BOUND

31. This Order shall apply to and be binding upon Respondent and its directors, officials, employees, agents, successors and assigns. No change in the status or control of Respondent shall alter any of the Respondent's responsibilities under this Order.

32. Respondent shall provide a copy of this Order to any successors before a controlling interest in Respondent's assets or property rights are transferred to the successor. Respondent shall provide a copy of this Order to each contractor, subcontractor, laboratory or consultant retained to perform any Work under this Order, within five (5) days after the effective date of this Order or on the date such services are retained, whichever date occurs later. Respondent shall also provide a

copy of this Order to each person representing Respondent with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms and conditions of this Order. With respect to the activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be related by contract to the Respondent within the meaning of 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Notwithstanding the terms of any contract, Respondent is responsible to the United States for compliance with this Order and for ensuring that its contractors, subcontractors and agents comply with this Order, and perform any Work in accordance with this Order.

33. Within five (5) days after the effective date of this Order, Respondent shall record a copy or copies of this Order in the appropriate governmental office where land ownership and transfer records are filed or recorded, and shall ensure that the recording of this Order is indexed to the titles of each portion of the Site that is owned by Respondent so as to provide notice to third parties of the issuance and terms of this Order with respect to those properties. Respondent shall, within fifteen (15) days after the effective date of this Order, send notice of such recording and indexing to EPA.

34. At least 30 days prior to the conveyance of any interest in property located within the Site, including, but not limited to, fee interests, leasehold interests, and mortgage interests, Respondent shall give the grantee written notice of this Order and any instrument by which an interest in real property has been conveyed that confers a right of access to the Site or any other property (hereinafter referred to as "access easements"), and any Institutional Controls in the form of deed restrictions that have been filed with respect to the property pursuant to Section XXI of the Order. At least 30 days prior to such conveyance, the Respondent shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Order and access easements or Institutional Controls in the form of deed restrictions was given to the grantee. In the event of any such conveyance, the Respondent's obligations under this Order, including its obligations to provide or secure access and Institutional Controls, as well as abide by such Institutional Controls, pursuant to Section XXI below, shall continue to be met

by the Respondent. In no event shall the conveyance release or otherwise affect the liability of the Respondent to comply with all provisions of this Order. If the United States approves, the grantee may perform some or all of the Work under this Order.

X. WORK TO BE PERFORMED

35. (A) The OUI UAO and the Amendment thereto (together, the "Amended UAO") require Kolmar, Wickhen, and C&D to conduct the same response actions as those required by this Order. Kolmar and Wickhen (hereinafter referred to as the "Performing Parties") are in the process of implementing the activities required by the OUI UAO. Respondent shall make best efforts to coordinate with the Performing Parties. Best efforts to coordinate shall include, at a minimum:

(a) Communication in writing within ten (10) days of the effective date of this Order to the Performing Parties as to Respondent's desire to comply with this Order and to participate in the performance of the Work (to the extent not already performed) or, in lieu of performance, to help pay for the performance of the Work;

(b) submission within twenty (20) days of the effective date of this Order of a good-faith offer to the Performing Parties to perform the Work, in whole or in part (to the extent not already performed), or, in lieu of performance, to pay for the Work, in whole or in part; and

(c) engaging in good-faith negotiations with Performing Parties to perform the Work, in whole or in part (to the extent not already performed), or, in lieu of performance, to pay for the Work, in whole or in part, if such Performing Parties refuse Respondent's first offer.

(B) Respondent shall make best efforts to participate in the performance of the Work with the Performing Parties. Best efforts to participate shall include, at a minimum:

(a) performance of such portion of the Work Respondent and the Performing Parties agree shall be undertaken by Respondent, pursuant to the Work Plans referred to below in this Section; and

(b) payment of all amounts as agreed by Respondent and the Performing Parties to be paid by Respondent if, in lieu of performance, Respondent has offered to pay for the Work, in whole or in part.

(C) Respondent shall provide EPA with notice of its intent to comply with this Order, consistent with Paragraph 30 above and shall specify Respondent's proposed manner of compliance with the Order. In addition, Respondent shall notify EPA in writing within five (5) days of the rejection, if any, by any of the Performing Parties of Respondent's offer to perform or, in lieu of performance, to pay for the Work.

(D) The undertaking or completion of any requirement of this Order by any other person, with or without the participation of Respondent, shall not relieve Respondent of its obligation to perform each and every other requirement of this Order.

(E) Respondent is jointly and severally responsible with C&D, Kolmar and Wickhen for carrying out all activities required by this Order and the Amended UAO (to the extent such activities have not already been completed). Accordingly, any failure to perform, in whole or in part, any requirement of this Order by any other person with whom Respondent is coordinating or participating in the performance of such requirement shall not relieve Respondent of its obligation to perform each and every requirement of this Order.

36. Respondent shall give EPA fourteen (14) days advance notice of all field activities to be performed pursuant to this Order.

37. All of the Work to be performed by Respondent pursuant to this Order shall be under the direction and supervision of a professional engineer licensed in the State of New York (hereinafter, the "Supervising Contractor"), the selection of which shall be subject to approval by EPA. The Performing Parties have selected as their Supervising Contractor Shield Environmental Associates, Inc. and EPA has approved that

selection. Respondent shall coordinate and cooperate with the Performing Parties and the selected Supervising Contractor. The Supervising Contractor, as well as all other contractors and subcontractors who engage in the "practice of engineering" at the Site on behalf of Respondent and the Performing Parties, as the "practice of engineering" is defined at Section 7201 of the New York State Education Law, must comply with all applicable New York State legal requirements regarding the practice of professional engineering within the State of New York, including, but not limited to, all applicable requirements of the New York State Education Law and Business Corporation Law. If at any time Respondent proposes to change the Supervising Contractor, Respondent shall notify EPA, in writing, and shall obtain approval from EPA before the new Supervising Contractor performs, directs or supervises any work under this Order.

38. The Work to be performed by Respondent pursuant to this Order, in cooperation with the Performing Parties, shall, at a minimum, achieve the requirements of the OU1 ROD and OU2 ROD (including, but not limited to, the Performance Standards) and be performed in a manner consistent with the OU1 ROD and OU2 ROD and this Order. Nothing in this Order or the plans or other documents required to be submitted pursuant to this Order, or EPA's approval of those plans or other documents, constitutes a warranty or representation of any kind by EPA that compliance with those plans and this Order will achieve the requirements of the OU1 ROD and OU2 ROD, and such compliance shall not foreclose EPA from seeking performance of additional work to achieve the Performance Standards or other requirements of the OU1 ROD and OU2 ROD.

39. Scope of Work. The Work to be performed by Respondent pursuant to this Order, in cooperation with the Performing Parties, shall include:

- a. Soil sampling as required to further delineate the extent of source area contamination that exceeds the excavation criteria established in EPA's OU1 ROD;
- b. Excavation of all materials from lagoons 1, 2, 3, 4, 6, 7 and 8, as well as the soils in the vicinity of these lagoons which exceed the excavation criteria;

- c. Treatment of excavated soil/sludges which contain organic constituents above the treatment levels specified in the Selected Remedy section of the Decision Summary of the OU1 ROD via on-Site ex-situ vapor extraction;
- d. Additional treatment of lagoon 7 soils/sludges via on-Site ex-situ bioslurry (treatment targeted primarily for semi-volatile contaminants);
- e. Stabilization/solidification of soils/sludges which fail the Resource Conservation and Recovery Act (RCRA) Toxicity Characteristic Leaching Procedure (TCLP) for inorganic constituents. The stabilization/solidification is primarily intended to address inorganic contamination in lagoons 6 and 8 and with the intent of reducing the mobility of the inorganic constituents. Other inorganic source area contaminants that exceed the RCRA-regulated levels for TCLP would also be stabilized/solidified;
- f. Confirmatory sampling and analysis to demonstrate compliance with the treatment levels specified in the OU1 ROD;
- g. Placement of treated and untreated soils/sludges in a lined and capped cell consistent with certain requirements of New York Code of Rules and Regulations Part 360. The base of the cell will consist of a high density polyethylene ("HDPE") liner and a sand drainage layer. The cell will be sloped to a wet well located adjacent to the cell to collect any leachate that is generated by the source area materials;
- h. Construction of a cap over the cell. The cap will consist of a low-permeability clay layer, an HDPE membrane, a sand drainage layer and a topsoil cover layer;
- i. Performance of air monitoring prior to, during, and following construction at the Site, to ensure compliance with Clean Air Act and New York State standards;

- j. Implementation of a semi-annual groundwater monitoring program to evaluate the rate and extent of reduction of the organic contaminants in the groundwater and to assess natural attenuation parameters;
- k. Disposal of carbon from carbon adsorption unit (to be used for treatment of vented air from the ex-situ vapor extraction unit), and other contaminated material generated during remediation in accordance with applicable laws and regulations;
- l. Maintenance of the cell to ensure continued long-term functioning of the cell;
- m. Disposal of leachate from the collection system/wet well in accordance with applicable laws and regulations;
- n. Performance of treatability studies to determine whether the bioslurry process will be effective in reducing the levels of contaminants in lagoon 7 materials, particularly semi-volatile contaminants, to the remediation goals, and if those studies show that the bioslurry process would not be sufficiently effective, then the contingency remedy specified in the OUI ROD for lagoon 7 materials will be implemented. The contingency remedy calls for excavation and off-Site treatment (as necessary) and disposal of lagoon 7 materials at a RCRA (Subtitle C) permitted treatment, storage and disposal facility; EPA expects that thermal treatment (i.e., incineration or low temperature thermal treatment) will be necessary to reduce the contaminants to appropriate Land Disposal Restriction ("LDR") levels prior to disposal;
- o. Implementation of institutional controls for purposes of imposing 1) restrictions on the installation and use of groundwater wells at the Site; and 2) deed restrictions to limit the future use of the Site in order to protect the integrity of the cap and lined cell to be installed as part of the Remedial Action; and

- p. Implementation of a monitoring program to sample surface water and sediments in Gold Creek, south of the Site.

40. REMEDIAL DESIGN

- a. Respondent shall participate and cooperate with the Performing Parties in the completion of the implementation of the Health and Safety Plan, approved by EPA on January 23, 1997, and the Remedial Design Work Plan ("RD Work Plan") approved by EPA on March 18, 1997. These plans are attached hereto and incorporated herein as Appendix 3.
- b. If performance of any subsequent phase of the Work required herein necessitates alteration of the Health and Safety Plan, Respondent shall submit amendments to the Health and Safety Plan to EPA.
- c. Among other things, the RD Work Plan includes plans and/or schedules for completion of the following:
 - (1) A preliminary design submittal. The preliminary design submittal shall include, at a minimum, the following:
 - (a) Design criteria;
 - (b) A project delivery strategy;
 - (c) Results of treatability studies and a recommendation as to whether ex-situ bioslurry treatment effectively meets the Performance Standards for soils in lagoon 7;
 - (d) Results of field sampling;
 - (e) Preliminary plans, drawings and sketches;
 - (f) Required specifications in outline form;

- (g) A preliminary construction schedule; and
- (h) Sequence of treatment operations detailing excavation, treatment, and disposal activities.

EPA will either approve the preliminary design submittal or will require modifications of it in accordance with the procedures set forth in Section XV (EPA Review of Submissions) of the Order.

- (2) An intermediate design submittal, if required by EPA or if independently submitted by Respondent. The intermediate design submittal shall be a continuation and expansion of the preliminary design. EPA will either approve the intermediate design submittal or will require modifications of it in accordance with the procedures set forth in Section XV (EPA Review of Submissions) of the Order.

- (3) A pre-final/final design submittal. The pre-final/final design submittal shall include, at a minimum, the following:

- (a) Final plans and specifications;
- (b) A draft Operation and Maintenance Plan ("O&M Plan"). The draft O&M Plan shall include, inter alia, a discussion of how the equipment constructed or installed pursuant to the Order shall be maintained at operating efficiency, how the long-term operation and maintenance of the disposal cell and cap, including leachate monitoring, will be addressed, and how the annual groundwater monitoring will be performed. In addition, the draft O&M Plan shall conform with EPA guidelines contained in "Considerations for Preparation of

Operation and Maintenance Manuals" (EPA 6801-0341). The draft O&M Plan will not be finalized until after submittal to EPA of laboratory data obtained during the Initial Testing Program required below;

- (c) A Construction Quality Assurance Project Plan ("CQAPP"). The CQAPP shall detail the approach to quality assurance during construction activities at the Site. The CQAPP shall specify a quality assurance official (QA Official), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of this project;
- (d) A Field Sampling Plan;
- (e) A plan for establishing institutional controls identified in EPA's OU1 ROD and OU2 ROD (i.e., declarations of covenants, conditions and restrictions and other requirements and controls for purposes of imposing (a) restrictions on the installation and use of groundwater wells at the Site; and (b) deed restrictions to limit the future use of the Site in order to protect the integrity of the cap and lined cell to be installed as part of the Remedial Action);
- (f) A final construction cost estimate;
- (g) A plan for implementation of construction, including, but not limited to, review of shop drawings to confirm consistency with the EPA-approved RD Work Plan, construction oversight, and the submission of engineering drawings depicting the constructed facility;

- (h) A Field Monitoring Plan which shall include, but not be limited to, the following:
 - (i) Site Security Plan to include, but not be limited to, a description of the measures to be taken to assure the safety of the personnel and equipment on-Site and to provide an effective barrier against unauthorized public access; and
 - (ii) A plan detailing procedures for handling excavated sludges and soils;
- (i) A Contingency Plan, which shall delineate procedures Respondent shall follow, including personnel it will contact, in the event of an emergency. If performance of any subsequent phase of the work required herein necessitates alteration of the Contingency Plan, Respondent shall submit to EPA, for review and approval, proposed amendments to the Contingency Plan. Upon approval by EPA, any such amendments shall be deemed incorporated into and made an enforceable part of the Order; and
- (j) A proposed schedule for implementing Paragraph 40.c.(3)(a)-(h), above.

EPA will either approve the pre-final/final design submittal or will require modifications of it in accordance with the procedures set forth in Section XV (EPA Review of Submissions) of the Order. The approved final design submittal shall be deemed the Remedial Design Report ("RD Report"), and shall be deemed incorporated into and an enforceable part of the Order.

41. Within 45 days of the effective date of this Order, Respondent shall, in cooperation and coordination with the Performing Parties, submit to EPA for review and approval proposed addenda to the RD Work Plan, SAMP, RD QAPP, and Site Management Plan ("SMP") which were submitted by the Performing Parties and approved by EPA. The addenda shall include the following:

- a. A plan for semi-annual groundwater monitoring throughout the contaminated groundwater plume to evaluate the rate and extent of reduction of organic contaminants in the groundwater and to assess natural attenuation parameters. The plan shall include a schedule for submission of semi-annual monitoring data and an annual report. The annual report shall include at a minimum: 1) comprehensive groundwater monitoring data from all previous groundwater monitoring and sampling events relevant to the groundwater monitoring plan implemented; 2) an analysis of the level of the contaminants in the groundwater (e.g., whether contaminant migration has been effectively prevented or stabilized, whether there have been any reductions or changes in the concentration of contaminants in the groundwater); 3) time versus concentration plots for contaminants and wells; 4) an evaluation of whether the concentration trends in the groundwater plume are consistent with the predictions of the groundwater modelling effort conducted during the OU2 RI/FS; and 5) an evaluation of the groundwater data collected around the containment cell to determine whether the containment cell is functioning properly.
- b. A plan for sampling surface water and sediments in Gold Creek, south of the Site, which includes sampling locations, parameters and frequency. Surface water sampling shall be conducted during the first year of the monitoring program and sediment sampling shall be conducted on a semi-annual basis. The plan shall include a schedule for submission of semi-annual data and an annual report evaluating said data.
- c. EPA will either approve the addenda to the RD Work Plan, SAMP, RD QAPP, and SMP or will require

modifications of them in accordance with the procedures set forth in Section XV (EPA Review of Submissions) of the Order. Upon approval by EPA, the addenda shall be deemed incorporated into the RD Work Plan, SAMP, RD QAPP, and SMP, respectively, and this Order and become enforceable under this Order.

- d. Respondent shall implement the EPA-approved addenda in accordance with the schedules contained therein.
- e. If performance of any subsequent phase of the work required herein necessitates alteration of the SMP or the RD QAPP or if Respondent, in cooperation and coordination with the Performing Parties, retains different contractors or subcontractors for performance of later phases of the work, Respondent (in cooperation and coordination with the Performing Parties) shall submit to EPA proposed amendments to the SMP and/or RD QAPP, which, upon approval by EPA, shall be deemed incorporated into and made an enforceable part of the Order.

42. REMEDIAL ACTION

a. Remedial Action Work Plan

- i. Within 30 days after the approval of the final design submittal, Respondent, in cooperation and coordination with the Performing Parties, shall submit to EPA a work plan for the performance of the Remedial Action at the Site (Remedial Action Work Plan or RA Work Plan). The Remedial Action Work Plan shall provide for construction of the remedy, in accordance with the OU1 ROD and OU2 ROD and Section X of this Order, as set forth in the design plans and specifications in the approved final design submittal. Upon its approval by EPA, the Remedial Action Work Plan shall be deemed incorporated into, and become enforceable under, the Order. At the same time as they submit the Remedial Action Work Plan, Respondent shall submit to EPA a Health and Safety Plan for field activities required by the Remedial Action Work

Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

ii. The Remedial Action Work Plan shall include the following:

- (1) the schedule for completion of the Remedial Action;
- (2) method for selection of the contractor;
- (3) schedule for developing and submitting other required Remedial Action plans;
- (4) methodology for implementation of the Construction Quality Assurance Plan;
- (5) methodology for implementation of the Operation and Maintenance Plan;
- (6) methodology for implementation of the Contingency Plan;
- (7) tentative formulation of the Remedial Action team;
- (8) construction quality control plan (by constructor); and
- (9) procedures and plans for the decontamination of equipment and the disposal of contaminated materials.

iii. The Remedial Action Work Plan also shall include a final schedule for implementation of all Remedial Action tasks identified in the EPA-approved RD Report and shall identify the initial formulation of the Respondent's Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

b. Construction

- i. Within sixty (60) days of Respondent's receipt of EPA's statement of approval of the Remedial Action Work Plan, Respondent (in cooperation and coordination with the Performing Parties) shall complete contractor procurement and initiate construction of the Remedial Action and shall thereafter perform and complete such construction in conformance with the EPA-approved RD Report, RA Work Plan and the schedules contained therein.
- ii. Within sixty days of completion of construction, Respondent (in cooperation and coordination with the Performing Parties) shall submit to EPA the "as-built" engineering drawings which depict the engineering facilities constructed pursuant to the requirements of this Order.
- iii. The as-built drawings shall be signed and stamped by a professional engineer licensed to practice in the State of New York.

c. Initial Testing Program

- i. Within twenty-one (21) days following completion of construction of the units with which Respondent (in cooperation and coordination with the Performing Parties) shall excavate, treat and dispose of lagoon materials and contaminated soil (the "Soil Remedy"), Respondent shall submit to EPA for review and approval a draft program for start-up and initial testing of the Soil Remedy (the "Initial Testing Program" or "ITP"), which shall demonstrate whether the treatment units will be capable of meeting the Performance Standards established in the OUI ROD and the requirements of the EPA-approved RD Report and operate in a manner that is protective of human health and the environment.
- ii. EPA will either approve the Initial Testing Program, or will require modifications of it, in

accordance with the procedures set forth in Section XV (EPA Review of Submissions) of the Order.

- iii. Within ten (10) days of Respondent's receipt of EPA's approval of the Initial Testing Program, Respondent (in cooperation and coordination with the Performing Parties) shall commence implementation of the EPA-approved Initial Testing Program, or any approved portion thereof.
- iv. Within thirty (30) days of completion of the Initial Testing Program or EPA-approved portion thereof, Respondent (in cooperation and coordination with the Performing Parties) shall submit to EPA the following: the results of the Initial Testing Program, including the laboratory data and all QA/QC documentation and the certification of a New York State-licensed professional engineer that operation of the Soil Remedy conforms with the requirements of the EPA-approved RD Report and is able to achieve the Performance Standards established in the OUI ROD. If EPA determines that operation of the Soil Remedy achieves the Performance Standards established in the OUI ROD and the requirements of the EPA-approved RD Report and that the remedy can be operated in a manner that is protective of human health and the environment, EPA will approve the results of the Initial Testing Program.
- v. If EPA determines that the operation of the Soil Remedy does not satisfy the requirements of the RD Report or achieve the Performance Standards or cannot be operated in a manner that is protective of human health and the environment, within fourteen (14) days of Respondent's receipt of such determination, Respondent (in cooperation and coordination with the Performing Parties) shall submit to EPA a proposal (the "Modification Proposal") for modifying the Soil Remedy, or any component(s) thereof, in order to correct such deficiencies. The Modification Proposal shall

include a detailed analysis of nonconforming elements and a proposal and schedule for bringing those elements into conformance, and for additional initial testing, if necessary. EPA will either approve the Modification Proposal or will require revisions thereof, in accordance with the procedures set forth in Section XV (EPA Review of Submissions) of the Order.

- vi. Within fifteen (15) days of Respondent's receipt of EPA approval of the Modification Proposal, Respondent (in cooperation and coordination with the Performing Parties) shall commence implementation of the Modification Proposal in accordance with the schedule contained therein.

43. Pre-Final/Final Inspections

a. Pre-Final Inspection

- i. At least 14 days prior to completion of the construction of the Remedial Action, Respondent and its contractor(s) shall be available to accompany EPA personnel or their representatives on a pre-final inspection of the construction.
- ii. Following the pre-final inspection, EPA will, as appropriate, specify necessary corrective measures to the equipment, units, or other items constructed or installed as part of the Remedial Action. If EPA requires corrective measures to the aforementioned constructed or installed items, Respondent (in cooperation and coordination with the Performing Parties) shall submit a corrective measures schedule and plan to EPA for approval. EPA will either approve the corrective measures schedule and plan, or will require revisions thereof, in accordance with the procedures set forth in Section XV (EPA Review of Submissions) of the Order. Within fourteen (14) days of receipt of EPA approval of the schedule and plan, Respondent (in cooperation and coordination with the Performing Parties) shall undertake the

corrective measures in accordance therewith. Within fourteen (14) days after completion of the corrective measures, Respondent and its contractor(s) shall be available to accompany EPA personnel or their representatives on an inspection, as provided for in the preceding Paragraph. Said inspection will be followed by further directions and/or notifications by EPA as provided above in this Paragraph.

b. Final Inspection

Within fourteen (14) days following EPA's approval of the results of the Initial Testing Program, Respondent and the Supervising Contractor shall be available for a Final Inspection in conjunction with EPA and/or EPA's designated representatives and the State and/or its designated representatives. EPA will consult with Respondent and/or its representative to determine a mutually agreeable time for EPA's performance of the Final Inspection within the aforementioned 14-day period. The Final Inspection shall include a walk-through of the entire project to determine project completeness, consistency with the EPA-approved RD Report, and ability to meet the Performance Standards. During the Final Inspection, all equipment shall be operationally tested.

44. Start-up and Operation

- a. If the ITP indicates that the treatment systems are expected to satisfy the Performance Standards established in the OU1 ROD and are consistent with the requirements of the RD Report, the OU1 ROD and this Order, EPA will so notify Respondent and will give Respondent (in cooperation and coordination with the Performing Parties) written authorization to commence implementation of the Remedial Action (hereinafter, "Start-Up Approval"). If EPA determines that the Soil Remedy does not so conform, EPA will so notify Respondent, and Respondent (in cooperation and coordination with the Performing Parties) shall proceed as further directed by EPA.

- b. Within seven (7) days of Respondent's receipt of EPA Start-Up Approval, Respondent (in cooperation and coordination with the Performing Parties) shall commence the Remedial Action in accordance with this Order and the EPA-approved RD Work Plan, and amendments thereto, and RD Report.
- c. Unless otherwise directed by EPA, Respondent shall not commence operation of the Remedial Action until Respondent receives Start-Up Approval from EPA.
- d. Respondent (in cooperation and coordination with the Performing Parties) shall operate the equipment necessary to implement the requirements contained in the EPA-approved RD Report and this Order. Operation, and sampling and monitoring in accordance with the EPA-approved SAMP, shall continue until EPA determines that the Performance Standards established in the OU1 ROD and OU2 ROD have been met.

45. Remedial Action Report

- a. Within 30 days after receiving a notice from EPA to proceed with development of a Remedial Action Report, Respondent (in cooperation and coordination with the Performing Parties) shall submit a draft Remedial Action Report to EPA for approval. The Remedial Action Report shall include:
 - i. A Notice of Completion indicating that the Remedial Action has been completed in compliance with the requirements of the EPA-approved RD Report and this Order;
 - ii. Verification that all remedial equipment has been decontaminated, dismantled and removed from the Site;
 - iii. Documentation that the requirements of the RD Report and Section X of this Order have been satisfied;

- iv. A certified statement, signed by a responsible official of Respondent, one of the Performing Parties, or the Respondent's Project Coordinator, which states the following:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- v. A certified statement by a qualified professional engineer licensed by the State of New York that the Remedial Action has been completed in conformance with the requirements of the RD Report and this Order.

- b. EPA will either approve the draft Remedial Action Report, thus making it the final Remedial Action Report, require modifications of it in accordance with the procedures set forth in Section XV (EPA Review of Submissions) of the Order, and/or require corrective measures to the Remedial Action. If EPA requires corrective measures to the Remedial Action, Respondent (in cooperation and coordination with the Performing Parties) shall undertake the corrective measures according to a schedule approved by EPA. Such corrective measures, if any, shall be followed by an inspection, further notification(s) by EPA, and submittal by Respondent of a revised draft Remedial Action Report to EPA, in accordance with this Paragraph. Upon approval by EPA, the Remedial Action Report shall be deemed incorporated in and an enforceable part of the Order.

46. Operation and Maintenance

- a. If, on the basis of the EPA-approved results of the Initial Testing program or other information generated during the implementation of the Remedial Action, EPA determines that changes to the draft O&M Plan are necessary, EPA will so advise Respondent. Within twenty-one (21) days of receipt of such notice, Respondent (in cooperation and coordination with the Performing Parties) shall propose to EPA amendments to the draft O&M Plan. EPA will either approve Respondent's proposed amendments to the draft O&M Plan, or will require modifications of them in accordance with the procedures set forth in Section XV (EPA Review of Submissions) of the Order. If EPA determines that Respondent needs not amend the draft O&M Plan approved by EPA as part of the RD Report, EPA will so notify Respondent in writing. The EPA-approved draft O&M Plan shall then be deemed the Final O&M Plan and shall become incorporated into and an enforceable part of the Order.
- b. Following EPA approval of the O&M Plan and the Remedial Action Report, Respondent (in cooperation and coordination with the Performing Parties) shall operate and maintain the Remedial Action in accordance with the EPA-approved O&M Plan.

47. Nothing in this Order, the Remedial Design Work Plan and amendments thereto or the Remedial Design Report constitutes a warranty or representation of any kind by EPA that compliance with the work requirements set forth in the Order and the EPA-approved RD Work Plan and amendments thereto or RD Report will achieve the Performance Standards. Respondent's compliance with the work requirements shall not foreclose EPA from seeking compliance with all terms and conditions of this Order, including, but not limited to, the applicable Performance Standards.

XI. FAILURE TO ATTAIN PERFORMANCE STANDARDS

48. In the event that EPA determines that additional response activities are necessary to meet applicable Performance

Standards, EPA may notify Respondent that additional response actions are necessary.

49. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional response activities are necessary to meet any applicable Performance Standards, Respondent (in cooperation and coordination with the Performing Parties) shall submit for approval by EPA a work plan for the additional response activities. The plan shall conform to the applicable requirements of Sections X, XVII, and XVIII of this Order. Upon EPA's approval of the work plan pursuant to Section XV, Respondent (in cooperation and coordination with the Performing Parties) shall implement the plan for additional response activities in accordance with the provisions and schedule contained therein.

XII. EPA PERIODIC REVIEW

50. Under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, EPA may review the Site to assure that the Work performed pursuant to this Order adequately protects human health and the environment. Until such time as EPA certifies completion of the Work, Respondent (in cooperation and coordination with the Performing Parties) shall conduct the requisite studies, investigations, or other response actions as determined necessary by EPA in order to permit EPA to conduct the review under Section 121(c) of CERCLA. As a result of any review performed under this Paragraph, the Respondent may be required to perform additional Work or to modify Work previously performed.

XIII. ADDITIONAL RESPONSE ACTIONS

51. EPA may determine that in addition to the Work identified in this Order and attachments to this Order, additional response activities may be necessary to protect human health and the environment. If EPA determines that additional response activities are necessary, EPA may require Respondent to submit a work plan for additional response activities. EPA also may require Respondent to modify any plan, design, or other deliverable required by this Order, including any approved modifications.

52. Not later than thirty (30) days after receiving EPA's notice that additional response activities are required pursuant to this Section, Respondent (in cooperation and coordination with the Performing Parties) shall submit a work plan for the response activities to EPA for review and approval in accordance with Section XV below. Upon approval by EPA, the work plan shall be deemed incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order. Upon approval of the work plan by EPA, Respondent (in cooperation and coordination with the Performing Parties) shall implement the work plan according to the standards, specifications, and schedule in the approved work plan. Respondent shall notify EPA of its intent to perform such additional response activities within seven (7) days after receipt of EPA's request for additional response activities.

XIV. ENDANGERMENT AND EMERGENCY RESPONSE

53. In the event of any action or occurrence during the performance of the Work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify the Remedial Project Manager or, if the Remedial Project Manager is unavailable, the Chief of the Eastern New York Remediation Section, New York Remediation Branch of the Emergency and Remedial Response Division, EPA Region II. Respondent shall take such action in consultation with the RPM and in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Plan.

54. Nothing in the preceding Paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

XV. EPA REVIEW OF SUBMISSIONS

55. After review of any deliverable, plan, report or other item which is required to be submitted for review and approval pursuant to this Order, EPA may: (a) approve the submission; (b)

approve the submission with modifications; (c) disapprove the submission and direct Respondent to re-submit the document after incorporating EPA's comments; or (d) disapprove the submission and assume responsibility for performing all or any part of the response action. As used in this Order, the terms "approval by EPA," "EPA approval," or a similar term means the action described in subparagraphs (a) or (b) of this Paragraph.

56. In the event of approval or approval with modifications by EPA, Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA.

57. Upon receipt of a notice of disapproval or a request for a modification, Respondent (in cooperation and coordination with the Performing Parties) shall, within twenty-one (21) days or such other time as may be specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, or approval with modifications, Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

58. If upon the first resubmission or upon any subsequent resubmission, the plan, report or other item is disapproved by EPA, Respondent shall be deemed to be out of compliance with this Order. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require that Respondent correct the deficiencies, in accordance with the preceding paragraphs of this Section. In addition, or in the alternative, EPA retains the right to amend or develop the plan, report or other item.

59. All plans, reports, and other submittals required to be submitted to EPA under this Order shall, upon approval by EPA, be deemed to be incorporated in and an enforceable part of this Order. In the event EPA approves a portion of a plan, report, or other item required to be submitted to EPA under this Order, the approved portion shall be deemed to be incorporated in and an enforceable part of this Order.

XVI. REPORTING REQUIREMENTS

60. a. In addition to any other requirement of this Order, Respondent (in cooperation and coordination with the Performing Parties) shall prepare and provide to EPA written monthly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (2) include all results of sampling and tests and all other data received by Respondent during the previous month in the implementation of the Work; (3) describe all actions, data and plans which are projected to be commenced or completed during the next month and provide other information relating to the progress of design and construction as is customary in the industry; (4) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the Remedial Action, and a description of all efforts made to mitigate those delays or anticipated delays. These reports are to be submitted to EPA by the tenth day of every month following the effective date of this Order.
- b. If the date for submission of any item or notification required by this Order falls upon a weekend or State or federal holiday, the time period for submission of that item or notification is extended to the next working day following the weekend or holiday.
- c. Upon the occurrence of any event during performance of the Work which, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center, Respondent shall, within twenty-four (24) hours, orally notify the EPA RPM, or, in the event of the unavailability of the EPA RPM, the Chief of the Eastern New York Remediation Section, New York Remediation Branch of the Emergency and Remedial Response Division, EPA Region II, in addition to the reporting required by Section 103. Within twenty (20) days of the onset of such an event, Respondent shall furnish EPA with a written report setting forth the events which occurred

and the measures taken, and to be taken, in response thereto.

- d. All reports and other documents submitted by Respondent to EPA (other than the monthly progress reports discussed above) which purport to document Respondent's compliance with the terms of this Order shall be signed by a responsible official of the Respondent.
- e. On request of EPA and subject to any claims of applicable privilege(s), Respondent shall submit to EPA all documents in its possession, custody, or control relating to (1) Respondent's offers to any Performing Parties to perform or pay for, or (2) Respondent's performance of or payment for, the Work required by this Order in conjunction with any Performing Parties.

XVII. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

61. Any QA/QC plan(s) submitted by Respondent pursuant to this Order shall be completed in accordance with the following EPA publications: "Test Methods for Evaluating Solid Wastes" ("SW-846") (3rd Ed.), the "Region II CERCLA Quality Assurance Manual" (October 1989), and the EPA documents entitled "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation" (EPA QA/R5) and "Preparing Perfect Project Plans" (EPA/600/9-88/087), or any revised versions thereof.

62. Respondent shall use QA/QC procedures in accordance with the QA/QC Plan(s) submitted and approved by EPA pursuant to this Order, and shall use standard EPA Chain of Custody procedures, as set forth in the National Enforcement Investigations Center Policies and Procedures Manual (November 1984), the National Enforcement Investigations Center Manual for the Evidence Audit (September 1981), and Section 1.3 of SW-846, or any amended versions thereof, while conducting all sample collection and analysis activities required pursuant to this Order. To provide quality assurance and maintain quality control, Respondent shall:

- a. Ensure that all contracts with laboratories used by Respondent for the analysis of samples taken pursuant to this Order provide for access of EPA personnel and

EPA-authorized representatives to assure the accuracy of laboratory results related to the Site;

- b. Ensure that the laboratories utilized by Respondent for the analysis of samples taken pursuant to this Order perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" (Revision No. 11, 1992) and the "Contract Lab Program Statement of Work for Organic Analysis," (Revision 9, 1994), and any amendments thereto (including amendments made during the course of the implementation of this Order);
- c. Ensure that all laboratories used by Respondent for analysis of samples taken pursuant to this Order participate in an EPA or EPA-equivalent QA/QC program; and
- d. Ensure that the laboratories used by Respondent for the analysis of samples taken pursuant to this Order analyze samples that EPA may submit to those laboratories for purposes of insuring that the laboratories meet EPA-approved QA/QC requirements.

63. Respondent shall notify EPA not less than fourteen (14) days in advance of any sample collection activity. At the request of EPA, Respondent shall allow split or duplicate samples to be taken by EPA or its authorized representatives, of any samples collected by Respondent with regard to the Site or pursuant to the implementation of this Order. In addition, EPA shall have the right to take any additional samples that EPA deems necessary.

XVIII. COMPLIANCE WITH APPLICABLE LAWS

64. All activities performed by Respondent pursuant to this Order shall be performed in accordance with the requirements of all federal and State laws and regulations. EPA has determined that the activities contemplated by this Order are consistent with the National Contingency Plan.

65. Except as provided in Section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site. Where any portion of the Work requires a federal or State permit or approval, Respondent (in cooperation and coordination with the Performing Parties) shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

66. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or State statute or regulation.

a. All off-Site transfer, treatment, storage, or disposal of Waste Material by Respondent must be in compliance with the applicable requirements of the Resource Conservation and Recovery Act, ("RCRA") 42 U.S.C. § 6901, et seq., Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., as well as their implementing regulations, and all other applicable laws, including, but not limited to, 40 CFR Parts 262 and 263 and 6 NYCRR Part 372. Furthermore, Respondent shall provide notice to EPA of any facilities that Respondent proposes to use for such off-Site transfer, storage, treatment, or disposal at least five (5) business days prior to the commencement of any such use, and shall obtain approval by EPA's RPM of the use of such facilities. Any and all off-Site disposal activities conducted by Respondent under this Order shall be performed in conformance with the NCP (including Section 300.440 of the NCP, 40 C.F.R. § 300.440) and any amendments thereto.

b. If Waste Material from the Site is to be shipped to a waste management facility outside of New York State, Respondent shall provide prior written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state (with a copy to the EPA RPM). However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards. Respondent shall include in the written notification

the following information: (i) the name and location of the facility to which the Waste Material is to be shipped; (ii) the type and quantity of the Waste Material to be shipped; (iii) the expected schedule for the shipment of the Waste Material; and (iv) the method of transportation. Respondent shall provide such notification to the receiving facility's state and to EPA in writing as soon as practicable, but in any event at least ten (10) business days prior to the said shipments. Respondent shall notify the receiving facility's state of major changes in its shipment plan, such as a decision to ship the Waste Material to another facility within the same state.

XIX. REMEDIAL PROJECT MANAGER, NOTIFICATION

67. EPA has designated the following individual as its RPM for the Site:

Maria Jon
New York Remediation Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region II
290 Broadway, 20th Floor
New York, N.Y. 10007-1866
(212) 637-3967

68. EPA has the unreviewable right to change its RPM. If EPA changes its RPM, EPA will inform Respondent in writing of the name, address, and telephone number of the new Remedial Project Manager.

69. The RPM shall have the authority lawfully vested in an RPM and On-Scene Coordinator by the NCP. The RPM shall have authority, consistent with the NCP, to halt any work required by this Order and to take any necessary response action.

70. The Performing Parties have selected as their Project Coordinator Duane Guilfoil of Shield Environmental Associates, Inc., and EPA has approved that selection. Respondent shall coordinate and cooperate with the Performing Parties and the selected Project Coordinator. The Project Coordinator shall be

responsible for overseeing the Respondent's and the Respondent (in cooperation and coordination with Performing Parties' implementation of this Order. If Respondent (in cooperation and coordination with the Performing Parties) wishes to change the Project Coordinator, Respondent (in cooperation and coordination with the Performing Parties) shall provide written notice to EPA five (5) days prior to changing the Project Coordinator, identifying the name and qualifications of the new Project Coordinator. Respondent's and the Performing Parties' selection of a Project Coordinator shall be subject to EPA approval.

71. All plans, reports, notices and other documents required to be submitted to EPA under this Order shall be directed to the following individuals at the addresses specified below:

1 copy: Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, N.Y. 10007-1866

Attention: Carroll & Dubies Superfund Site Attorney

1 copy (or 4 copies if such communication is a plan or report):

Chief, New York Remediation Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
290 Broadway, 20th Floor
New York, N.Y. 10007-1866

Attention: Carroll & Dubies Superfund Site Remedial
Project Manager

72. In addition, when submitting to EPA any written communication required hereunder, Respondent shall simultaneously submit 1 copy of that communication (unless the given document is a plan or report, in which case 4 copies shall be submitted) to:

Director, Division of Hazardous Waste Remediation
New York State Department of Environmental
Conservation

50 Wolf Road
Albany, N.Y. 12233-7010

Attention: Carroll & Dubies Superfund Site
Project Manager

XX. COMMUNITY RELATIONS

73. Respondent shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Respondent shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXI. SITE ACCESS, INSTITUTIONAL CONTROLS AND DATA/DOCUMENT AVAILABILITY

74. a. Respondent shall provide EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site and any other property to which access is required to implement this Order, or the remedy selected in the OU1 ROD and OU2 ROD, to the extent that the property is owned by, or access to the property is controlled by Respondent, for the purpose of conducting any activity related to this Order, including, but not limited to, the following activities:

- i. Monitoring the Work;
- ii. Verifying any data or information submitted to EPA;
- iii. Conducting investigations relating to contamination or conditions at or near the Site;
- iv. Obtaining samples;

- v. Assessing the need for, planning, or implementing additional response actions at or near the Site;
 - vi. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents;
 - vii. Assessing Respondent's compliance with this Order; and
 - viii. Determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by Paragraph 75 of this Order or the Institutional Controls established pursuant to this Order.
- b. If EPA so requests, in regard to property owned or controlled by Respondent to which access is needed to implement this Order or the remedy selected in the OU1 ROD and OU2 ROD, for each parcel of property the Respondent shall record in the Registry of Deeds of Orange County, New York, access easements that grant to one or more of the following persons or entities, as directed by EPA:
- i. the United States, on behalf of EPA, and its representatives,
 - ii. the State and its representatives,
 - iii. the Performing Parties and their representatives, or
 - iv. other appropriate grantees,
- a right of access, running with the land, for the purpose of conducting any activity related to this Order, including, but not limited to, those activities

listed in Subparagraph a. of this Paragraph. Respondent shall, within 45 days of EPA's request, submit to EPA for review and approval with respect to such property:

- i. Draft access easements that are enforceable under the laws of the State of New York, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and
- ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within fifteen (15) days of EPA's approval and acceptance of such easements, Respondent shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, file the easements with the Registry of Deeds of Orange County. Within thirty (30) days of filing the easements, Respondent shall provide EPA with a title insurance policy or other final title evidence acceptable under the Standards, and a certified copy of the original recorded easements showing the clerk's recording stamps.

- c. To the extent that the Site or any other property to which access is required to implement this Order or the remedy selected in the OU1 ROD and OU2 ROD is owned or controlled by persons other than Respondent, Respondent shall use best efforts to secure from such persons access thereto for Respondent, as well as for the United States on behalf of EPA, and the State, as well

under Subparagraph d. are not submitted to EPA in draft form within 45 days of a request by EPA for such easements, Respondent shall promptly notify EPA in writing, and shall include in that notification a summary of the steps (including requests, offers and responses thereto) that Respondent has taken to attempt to obtain access or access easements. EPA may, as it deems appropriate, assist Respondent in obtaining access or access easements.

75. a. Respondent shall refrain from using the Site (or any other property affected by the remedy selected in the OU1 ROD and OU2 ROD) in any manner, or engaging in any other activities, that would interfere with or adversely affect the overall integrity or protectiveness of any of the remedial measures to be implemented pursuant to this Order. For example, Respondent shall not:
- i. install or use any groundwater wells at the Site, except as specifically approved by EPA for the implementation of the Work; or
 - ii. undertake any use of the Site which would adversely affect the integrity of the cap and lined cell that are to be installed as part of the remedy.
- b. If EPA so requests, in regard to property owned or controlled by Respondent, at which Institutional Controls are needed, Respondent shall 1) grant to one or more of the following persons or entities, as directed by EPA:
- i. the United States, on behalf of EPA, and its representatives,
 - ii. the State and its representatives,
 - iii. the Performing Parties and their representatives, or

iv. other appropriate grantees,

and 2) record in the Registry of Deeds of Orange County, New York, Institutional Controls in the form of deed restrictions, running with the land, that impose the obligations and restrictions established by Subparagraph a. of this Paragraph or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Order. Respondent shall, within 45 days of EPA's request, submit to EPA for review and approval with respect to such property:

- i. Draft deed restrictions that are enforceable under the laws of the State of New York, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and
- ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within fifteen (15) days of EPA's approval and acceptance of such deed restrictions, Respondent shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, file the deed restrictions with the Registry of Deeds of Orange County. Within thirty (30) days of filing the deed restrictions, Respondent shall provide EPA with a title insurance policy or other final title evidence acceptable under the Standards, and a certified copy of the original recorded deed restrictions showing the clerk's recording stamps.

as their representatives (including contractors), for the purpose of conducting any activity related to this Order including, but not limited to, those activities listed in Subparagraph a. of this Paragraph.

- d. If EPA so requests, to the extent that the Site or any other property to which access is required to implement this Order, or the remedy selected in the OU1 ROD and OU2 ROD, is owned or controlled by persons other than Respondent, Respondent shall also use best efforts to secure from such persons the recordation in the Registry of Deeds of Orange County, New York, of access easements that grant to one or more of the following persons or entities, as directed by EPA:

- i. the United States, on behalf of EPA, and its representatives,
- ii. the State and its representatives,
- iii. the Performing Parties and their representatives, or
- iv. other appropriate grantees,

a right of access to the property, running with the land, for the purpose of conducting any activity related to this Order, including, but not limited to, those activities listed in Subparagraph a. of this Paragraph. If such access easements are requested, Respondent shall proceed in accordance with the requirements of Subparagraph b. of this Paragraph.

- e. For purposes of Subparagraphs c. and d. of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access and/or access easements. If any access required by Subparagraph c. is not obtained within 45 days of the effective date of this Order, or within 45 days of the date EPA notifies the Respondent in writing that additional access beyond that previously secured is necessary, or if any access easements requested by EPA under Subparagraph d. are not submitted to EPA in draft

c. To the extent that the Site or any other property at which Institutional Controls are needed is owned or controlled by persons other than Respondent, Respondent shall use best efforts to secure a commitment by such persons to abide by the obligations and restrictions established by Subparagraph a. of this Paragraph.

d. If EPA so requests, to the extent that the Site or any other property at which Institutional Controls are needed is owned or controlled by persons other than Respondent, Respondent shall also use best efforts to secure from such persons the 1) granting to one or more of the following persons or entities, as directed by EPA:

- i. the United States, on behalf of EPA, and its representatives,
- ii. the State and its representatives,
- iii. the Performing Parties and their representatives, or
- iv. other appropriate grantees,

and 2) recordation in the Registry of Deeds of Orange County, New York, of Institutional Controls in the form of deed restrictions, running with the land, that impose the obligations and restrictions established by Subparagraph a. of this Paragraph or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Order. If such deed restrictions are requested, Respondent shall proceed in accordance with the requirements of Subparagraph b. of this Paragraph.

e. For purposes of Subparagraphs c. and d. of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of Institutional Controls in the form of commitments or deed restrictions. If any commitments required under Subparagraph c. are not obtained within 45 days of the

effective date of this Order, or any deed restrictions requested by EPA under Subparagraph d. of this Paragraph are not submitted to EPA in draft form within 45 days of EPA's request for such deed restrictions, Respondent shall promptly notify EPA in writing, and shall include in that notification a summary of the steps (including requests, offers and responses thereto) that Respondent has taken to attempt to obtain such commitments or deed restrictions. EPA may, as it deems appropriate, assist Respondent in obtaining such commitments or deed restrictions.

f. If EPA determines that land and/or water use restrictions in the form of state or local laws, regulations or ordinances are needed to implement the remedy selected in the OU1 ROD and OU2 ROD, ensure the overall integrity and protectiveness thereof, or ensure non-interference therewith, Respondent shall cooperate with EPA's efforts to secure such governmental controls.

76. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulation.

77. Respondent may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R. § 2.203, provided such claim is not inconsistent with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), or other provisions of law. This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated by Respondent at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the State without further notice to Respondent. Respondent shall not assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

78. Respondent shall maintain for the period during which this Order is in effect an index of documents that Respondent claims

contain confidential business information. The index shall contain, for each document, the date, author, addressee, and subject of the document. Upon written request from EPA, Respondent shall submit a copy of the index to EPA.

XXII. RECORD PRESERVATION

79. Respondent shall provide to EPA upon request, copies of all documents and information within its possession and/or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, including but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

80. Until ten (10) years after EPA provides notice pursuant to Paragraph 97, below, of the satisfactory completion of the Work, Respondent shall preserve and retain, and shall instruct its contractors, subcontractors, and anyone else acting on Respondent's behalf with respect to the Site to preserve and retain, all records, documents, and information of whatever kind, nature, or description now in its possession or control or which come into its possession or control that relates in any manner to the Site or the Work conducted at the Site. At the conclusion of this document retention period, Respondent shall notify EPA at least ninety (90) days prior to the destruction of any such records, documents or information, and upon request by EPA, Respondent shall deliver all such records, documents and information to EPA.

XXIII. DELAY IN PERFORMANCE

81. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of this Section shall be considered a violation of this Order. Any delay in performance of this Order shall not affect

Respondent's obligations to perform all obligations fully under the terms and conditions of this Order.

82. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's RPM within forty-eight (48) hours after Respondent first knew or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within five (5) business days after notifying EPA by telephone, Respondent shall provide written notification fully describing the nature of the delay, any justification for the delay, any reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that have been or will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

XXIV. ASSURANCE OF ABILITY TO COMPLETE WORK

83. Respondent shall demonstrate its ability to complete or fund such portion of the Work as Respondent and the Performing Parties agree shall be undertaken or funded by Respondent and to pay all claims that arise from the performance of such Work, by obtaining and presenting to EPA one of the following; (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondent has sufficient assets available to perform such Work. Respondent shall demonstrate financial assurance in an amount no less than the cost of that portion of the Work which Respondent and the Performing Parties agree shall be undertaken or funded by Respondent. If Respondent seeks to demonstrate ability to complete the remedial action by means of internal financial information, or by a guarantee of a third party, it shall resubmit such information annually, on the anniversary of the effective date of this Order. If EPA determines that such financial information is inadequate, Respondent shall, within thirty (30) days after receipt of EPA's notice of determination,

obtain and present to EPA for approval one of the other three forms of financial assurance listed above.

84. At least seven (7) days prior to commencing any work at the Site pursuant to this Order, Respondent shall submit to EPA a certification that Respondent or its contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondent pursuant to this Order. Respondent shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

XXV. UNITED STATES NOT LIABLE

85. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent, or its directors, officials, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States may be deemed to be a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XXVI. ENFORCEMENT AND RESERVATIONS

86. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States in connection with the Site. This reservation shall include but not be limited to past costs, future costs, direct costs, indirect costs, the costs of oversight, as well as accrued interest as provided in Section 107(a) of CERCLA.

87. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement

from Respondent for its costs, or seek any other appropriate relief.

88. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA, or any other applicable law.

89. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statutes or regulations.

90. Respondent shall be subject to civil penalties under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), in the event that Respondent willfully violates, or fails or refuses to comply with this Order without sufficient cause. Such civil penalties shall be in an amount not greater than \$27,500 per day, subject to possible further adjustments of this penalty maximum consistent with the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996), and the regulations promulgated thereunder, including the Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69360 (December 31, 1996). In addition, failure to properly carry out response actions under this Order, or any portion hereof, without sufficient cause, may result in liability under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three (3) times the amount of any costs incurred by EPA as a result of such failure to take proper action.

91. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person for any liability it may have arising out of or relating in any way to the Site.

92. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XXVII. EFFECTIVE DATE AND COMPUTATION OF TIME

93. This Order shall be effective fourteen (14) days after receipt by Respondent, unless a conference is timely requested pursuant to Paragraph 94, below. If such conference is timely requested, this Order shall become effective three (3) days following the date the conference is held, unless the effective date is modified by EPA. All times for performance of ordered activities shall be calculated from this effective date.

XXVIII. OPPORTUNITY TO CONFER

94. Respondent may, within thirteen (13) days after receipt of this Order, request a conference with EPA to discuss this Order. If requested, the conference shall occur within seven (7) days of Respondent's request for a conference.

95. The purpose and scope of the conference shall be limited to issues involving the implementation of the Work required by this Order and the extent to which Respondent intends to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondent's request, Respondent may appear in person or by an attorney or other representative.

96. Requests for a conference must be by telephone to Sharon E. Kivowitz, Assistant Regional Counsel, Office of Regional Counsel, EPA Region II, telephone (212) 637-3183, followed by written confirmation mailed that day to Ms. Kivowitz and the RPM at the addresses set forth in Section XIX of this Order.

XXIX. TERMINATION AND SATISFACTION

97. This Order will be terminated by EPA if Respondent demonstrates in writing and certifies to the satisfaction of EPA that all Work and activities required under this Order, including any additional work required by EPA, have been performed fully in accordance with this Order and EPA has approved the certification

in writing. Such an approval by EPA, however, shall not relieve Respondent of any remaining obligations under the Order, including those requirements set forth in Section XXII regarding record preservation. Respondent's written submission under this Paragraph shall include a sworn statement by a responsible official of the Respondent which states the following: "I certify that the information contained in or accompanying this submission is true, accurate and complete".

So Ordered, this 13 day of June, 1997.

BY: Willie J. Fox

Jeanne M. Fox

Regional Administrator

U.S. Environmental Protection Agency, Region II

APPENDIX 1
THE OUI ROD

APPENDIX 2
THE OU2 ROD

APPENDIX 3
THE RD WORK PLAN

FIGURE 1